

IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL
WRIT PETITION NO. 6856 (SS) OF 2001
(Old No. 8624 of 1991)

1. Birendra Singh, S/o Narendra Singh, R/o Village Kuoor Post Jibvakotdhar, District Uttar Kashi.
2. Santi Lal, S/o Gabbu, R/o Village Kumola, Post Purola/
3. Kedar Singh, S/o Swaroop Singh, R/o Village Molatahhi Post Molatahi, U.Ka.
4. Ranvir Singh, S/o Kunwar Singh, R/o Sandara Pot Moori Uttar Kashi.
5. Jogendra Singh, S/o Sunder Singh, R/o Village Nanaee, Post Mori, District Uttar Kashi.
6. Karan Chand, S/o Daleep Singh, R/o Village Barnalipi Post Tikori District Uttar Kashi.
7. Rajendra Singh, S/o Jot Singh, R/o Village Makana Post Purola, Uttar Kashi.
8. Jagat Singh, S/o Bhajan Singh, R/o Village and Post Sarnaula, District Uttar Kashi.
9. Prahlad Singh, S/o Chandan Singh, R/o Village Koti, Post Gangtahi, District Uttar Kashi.
10. Vivaka Nand, S/o Sri Salik Ram, R/o Village Kutiyal Gaon Post Badkoo, District Uttar Kashi. Petitioners.

Versus

1. District Magistrate/Collector, Uttar Kashi.
2. District Inspector of Schools, Uttar Kashi.
.....Respondents.

Sri N.S. Negi, Advocate for the petitioner.
Learned Standing Counsel for the State.

Dated: 03.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioners have prayed for a writ of certiorari quashing the order dated 1st February, 1991 and 2nd February, 1991 passed by the respondent no. 1.

Brief facts according to the petitioner are that in pursuance of the selection made in favour of the petitioners, separate appointment letters were issued on 30th January, 1991 to them. The petitioners have joined their respective educational institutions.

As will appear from the appointment letters that the petitioners were appointed in accordance with rules framed under the U.P. Class IV Employees Service Rules, 1975. A perusal of the appointment letter also shows to this effect:-

“कार्यभार ग्रहण करने की तिथि से विभागीय चयन समिति द्वारा चयनित निम्नांकित अभ्यर्थियों को उनके सम्मुख अंकित विद्यालय में चतुर्थ वर्गीय कर्मचारी वेतन क्रम 750.940 परिचारक/लैववियरर पद पर नितान्त अस्थायी रूप से नियुक्त किया जाता है। उनकी यह नियुक्ति किसी भी समय बिना पूर्व सूचना के समाप्त की जा सकती है। इस नियुक्ति पर कार्यभार ग्रहण करने हेतु कोई मार्ग व्यय देय नहीं होगा। कार्यभार ग्रहण करने की अन्तिम तिथि 18.2.1991 होगी। अन्यथा नियुक्ति स्वतः निरस्त समझी जायेगी।”

However, according to the case of the petitioners since some persons could not be appointed, they made complaint and by a general order, the appointments made in favour of the petitioners were cancelled. At the time of filing of the writ petition following interim order was granted on 25.03.1991:-

“Issue notice.

Till further orders of this Court, the operation of the order dated 1.2.1991 passed by the respondent no. 1, order dated 1.2.1991 passed by the respondent no.3 and of the order dated 2.2.1991 passed by the respondent no. 1 (Annexures 13, 14 and 16 to the writ petition) respectively will remain stayed.”

As a result of the same, the petitioners are still working as Class IV employee in pursuance of the appointment letters issued in their favour.

A counter affidavit has been filed, where in paragraph 3, it has not been disposed that the vacancy was properly advertised for 72 posts in the newspaper.

In **Basudeo Tiwary Vs. Sido Kanhu University and others 1998 (8) SCC** the Apex Court has observed as under:-

*“If notice is not given to him, then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected is not given notice of such a proceeding and a conclusion is drawn in his obscene, such conclusion would not be just, fair or reasonable as noticed by this Court in **D.T.C. Mazdoor Sabha 1991 Supp (1) SCC 600** Case.”*

Further more, the petitioners having continued since 1991 and 17 years have already passed, therefore, there is no occasion to cancel at this state. However, proper course will be that if any adverse orders are required, a proper opportunity has to be given to the petitioner. A writ of certiorari issued quashing the orders dated 01.02.1991, 02.02.1991 passed by respondent no. 1 and order dated 01.02.1991 passed by respondent no. 2 (Annexures 13, 16 and 14 to the writ petition).

However, it will be open to pass the orders considering the appointments after giving opportunity to the petitioner.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

03.03.2006

Rathour